

February 24, 2009

**OFFICE OF THE HEARING EXAMINER  
CITY OF RENTON**

**REPORT AND RECOMMENDATION**

APPELLANT: Kushal Varma & Kajal Ram  
2609 NE 5<sup>th</sup> Court  
Renton, WA 98056

Ram Short Plat Variance Appeal  
LUA-08-123, V-A, V-A

After reviewing the Appellant's written requests for a hearing and examining available information on file, the Examiner conducted a public hearing on the subject as follows:

*The following minutes are a summary of the February 10, 2009 hearing.  
The legal record is recorded on CD.*

The hearing opened on Tuesday, February 10, 2009, at 10:42 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<b><u>Exhibit No. 1:</u></b> Hearing Examiner's file containing the original appeal letter and notification of this hearing.	<b><u>Exhibit No. 2:</u></b> Staff's yellow file
<b><u>Exhibit No. A:</u></b> Vicinity Map	<b><u>Exhibit No. B:</u></b> Short Plat Plan with Retention of House
<b><u>Exhibit No. 3:</u></b> Series of Photographs of property	<b><u>Exhibit No. C:</u></b> Short Plat Plan with House showing Fireplace
<b><u>Exhibit No. D:</u></b> Photograph showing Fireplace in Relation to Site	<b><u>Exhibit No. E:</u></b> Aerial photo of Site
<b><u>Exhibit No. F:</u></b> Photograph of NE 6 <sup>th</sup> Street looking West to East	

Parties Present:

Rocale Timmons, Assistant Planner  
Ann Nielsen, Assistant City Attorney

Kushal Varma, Owner (Appellant)  
Tom Touma, Engineer

The Examiner stated that there are two variances; front yard landscaping and front yard setback. The short plat was approved subject to removal of a house that violated setback standards and would not be able to comply with the landscape standards along the frontage of the property.

Kushal Varma stated that the existing house is his current residence. Removing the house would create a hardship on his family. The way the house is currently sitting, it does meet the 20-foot setback, but with the improvement on the Queen Avenue side, they would no longer be in compliance. The staff suggested that the house could be moved to meet the requirements but that would create a bigger financial burden and it is not feasible for them to move the house or his family.

Ms. Timmons stated that the house does meet the north side yard setback and the required setback on Queen is 15-feet for the primary structure.

Mr. Varma further stated that there is no garage in the front facing Queen, the parking is located at the rear of the house. On completion of this particular project all the neighbors will be served with sidewalk and a wider road, which will allow pedestrian traffic more room. NE 6<sup>th</sup> and Queen do not currently have sidewalks. There are school busses that drop off children on NE 6<sup>th</sup> and there currently is no place for the children to walk, they use his driveway as a sidewalk. He showed a set of five photos with the roadway, school busses and children walking.

Upon questioning by Ms. Nielsen, Mr. Varma stated that the short plat was originally approved subject to the removal of the house in question today. They have changed some of the windows and painted the house. This was done with full knowledge that the house might have to be removed. The hardship would be financial as well as having to move his family from the house.

In the appeal letter, Mr. Varma stated that removing the house would make the project unprofitable, the development costs would remain the same but the revenue would be significantly decreased. He is trying to not lose more money on this development.

Mr. Touma stated that they would like to keep the house until such time when the economy is in a better place, based on economics, this move would greatly impact the family. The house is 50 years old and would need to be removed or refurbished.

The Examiner stated that the premise for the application initially was that this house would be removed. It was a condition that the applicant came in with in order to get the short plat processed and approved.

Ms. Nielsen moved for a summary judgment insofar as the appellant has failed to meet his burden to overcome the City's determination at this point. Case law supports that strain or financial burden is generally ruled out.

The Examiner denied the dismissal.

Ms. Timmons entered a list of exhibits, which showed the exterior wall for the chimney on the existing home and its location to the property line, a line on a photograph showing where the sidewalk would be located and a third photo showing a tree that is part of the subject site. The property protrudes into NE 6<sup>th</sup> and Queen Avenue N quite a distance.

Mr. Varma stated that the chimney has now been removed.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 11:18 am.

### **FINDINGS, CONCLUSIONS & RECOMMENDATION**

Having reviewed the record in this matter, the Examiner now makes and enters the following:

#### **FINDINGS:**

1. The appellants, Kursal Varma and Kajal Ram, filed an appeal of the denials of two variances from the Zoning Code. The appellant seeks to retain an existing home that would provide an approximately 3.2 foot front yard and insufficient room for a required five (5) foot landscape strip.
2. The appeal was filed in a timely manner.
3. The subject site is located at 3629 NE 6<sup>th</sup> Street in the City of Renton. The property is located on the southwest corner of the intersection of NE 6th Street and Queen Avenue NE.
4. The appellant has proposed to subdivide an approximately 44,432 square foot parcel into six lots. Proposed Lot 1 would be a corner lot at Queen and NE 6th. Proposed Lot 2 would be west of Proposed Lot 1. Proposed Lots 3 to 6 would span the lot in an east to west direction with Proposed Lot 3 immediately south of Proposed Lots 1 and 2. Proposed Lot 3 would front along Queen Avenue NE.
5. There is an existing home on the subject site. That home is located on what would be Proposed Lot 3.
6. The proposed plat was altered in response to a requirement to preserve significant trees and to accommodate right-of-way dedications. As part of the original application and plat the appellant agreed to remove the existing home since it would intrude into a required front yard setback and required landscape strip along Queen Avenue NE.
7. Code requires a 15-foot setback along Queen as well as a five-foot landscape strip. The home would be situated approximately 3.2 feet from the street or 11.8 feet less than the required 15 feet. The 3.2-foot setback would also mean the lot could not provide the required five feet of landscaping along Queen.
8. The proposed plat was approved with the understanding that the non-conforming home would be removed. The plans showed its proposed removal.
9. Somewhere in the interim between application and the filing of the appeal, the appellant and his family moved into the non-conforming residence. Subsequent to the approval of the plat the appellant also applied for variances to allow less than the required 15 foot front yard and less than the required five feet of landscaping along the frontage, proposing instead to provide 3.2 of front yard setback and similar landscaping depth.
10. The appellant alleges that the plat cannot be profitably developed if the existing home is demolished and moving his family out of the home would be a hardship. The allegations are that providing the required yard and landscaping would create an undue hardship. In order to accommodate the yard and landscaping, the appellant alleges that the home would either have to be demolished or moved. The appellant alleges that the economics of the situation and inconvenience of moving would create an undue hardship that the variances would put right.

11. Staff found that the applicant did not suffer undue hardship due to any special circumstance related to lot's size, shape or topography. They found that the appellant either has reasonable use of the site in its current condition, with one conforming home or that, dividing the site according to code provides a reasonable use of the subject site even if the existing home has to be removed or relocated. Staff found that approving either variance would grant the appellant a special privilege not afforded to other similarly located property in that zone.
12. The appellant moved into the home after beginning this process. Any claim of inconvenience was created by the appellant's actions knowing the home was to be demolished as part of his submitted plat application.
13. Variance Criteria are contained in Section 4-9.250B.5:
  - a. That the applicant suffers undue hardship and the variance is necessary because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings of the subject property, and the strict application of the Zoning Code is found to deprive subject property owner of rights and privileges enjoyed by other property owners in the vicinity and under identical zone classification;
  - b. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated;
  - c. That approval shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the subject property is situated;
  - d. That the approval as determined by the Reviewing Official is a minimum variance that will accomplish the desired purpose. (Amd. Ord. 4835, 3-27-2000)

#### **CONCLUSIONS:**

1. The appellant has the burden of demonstrating that the decision of the City Official was either in error, or was otherwise contrary to law or constitutional provisions, or was arbitrary and capricious (Section 4-8-110(E)(7)(b)). The appellant has not demonstrated that the action of the City should be reversed. The appeal is denied.
2. Arbitrary and capricious action has been defined as willful and unreasoning action in disregard of the facts and circumstances. A decision, when exercised honestly and upon due consideration of the facts and circumstances, is not arbitrary or capricious (Northern Pacific Transport Co. v Washington Utilities and Transportation Commission, 69 Wn. 2d 472, 478 (1966)).
3. An action is likewise clearly erroneous when, although there is evidence to support it, the reviewing body, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. (Ancheta v Daly, 77 Wn. 2d 255, 259 (1969)). An appellant body should not necessarily substitute its judgment for the underlying agency with expertise in a matter unless appropriate.
4. The decision to deny the variances was appropriate. As has been said many times before, a variance is not appropriate unless it meets all of the criteria and not just one or two criteria. Another issue to emphasize is that economic issues are not considered in dealing with a variance. There must be a physical limitation and not a fiscal limitation that deprives the applicant of reasonable use of the property. The

applicant voluntarily entered into this plat process and as part of that application, the applicant agreed that the existing home would have to be removed or, at least, modified in some fashion. The home's location would violate current Zoning provisions by providing substantially less than the required front yard along a street and not providing the required five-foot landscape strip. The applicant can readily divide the lot according to current zoning standards and create reasonably sized lots and construct homes on those lots. In no way does the Zoning Code deprive the appellant of rights and privileges enjoyed by other property owners in the vicinity.

5. Will having to move out of the home be an inconvenience? Certainly. Will having to demolish a reasonable home be economically distressful? Probably, although in return the applicant creates additional saleable lots. The profit might be less but that is the applicant/appellant's choice. When the platting process began, the appellant did not reside in the home and so made a choice that should not affect City Zoning regulations.
6. The failure to provide the required front yard setback might not appear to create any hardship but a standard setback along a street frontage is generally maintained. It provides an open appearance and allows those at their front door or in their front yard to scan the streetscape on either side. The setback also removes the home from immediate traffic impacts of noise and fumes. The concept of a standard setback is so consistent in code that homes located on corner lots are generally required to provide the setback along both street frontages so neighbors, again, have sightlines that are not visually interrupted by homes where a front yard should be located.
7. Approval of either of these variances would be a grant of special privilege. Almost every new plat is based on the redevelopment of existing underlying plats and/or lots. In many of those cases existing homes are poorly located in terms of setbacks or yard requirements vis-à-vis new or existing code standards. In all those cases the applicants agree to remove or relocate those homes to conform with current zoning. This is almost so routine as to be a known standard. If the appellant were given a variance or variances all of those similarly situated, that is those redeveloping lots, would equally demand to retain non-conforming structures. Approving these variances would create an undue precedent and a special privilege.
8. Is this the minimum variance to provide reasonable use of the subject site? The appellant would appear to be dictating the standards by insisting the home must remain where it is. Obviously, if the appellant is not willing to alter or move the existing home, the minimum variance relief is the full extent of the yard reduction. In this case, there is no way that the applicant can vary its construction or location to allow a smaller deviation from the Code standards. But no variance is really necessary to allow reasonable use of the subject site.
9. The decision below was appropriate. In order for a variance to be approved it must satisfy all four (4) criteria. It is not sufficient to satisfy one or another of the criteria or even three of the criteria. There is no undue hardship. The appellant has reasonable use of the subject site. The economics of the situation were appropriately disregarded by staff, as was the supposed inconvenience in having to move or relocate the appellant's family. This appellant applied for the underlying plat knowing full well the home would have to be removed or moved so any hardship was created by the appellant, not the imposition of the regulations. Under those circumstances staff could not approve the variances and their decision should stand.
10. The decision below should not be reversed without a clear showing that the decision is clearly erroneous or arbitrary and capricious. This office has found that the decision below was sound and the decision below is affirmed.

**DECISION:**

The decision is affirmed and the appeal is denied.

ORDERED THIS 24<sup>th</sup> day of February 2009

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FRED J. KAUFMAN  
HEARING EXAMINER

TRANSMITTED THIS 24<sup>th</sup> day of February 2009 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Gregg Zimmerman, PBPW Administrator	Transportation Division
Alex Pietsch, Economic Development	Utilities Division
Jennifer Henning, Development Services	Neil Watts, Development Services
Stacy Tucker, Development Services	Janet Conklin, Development Services
Renton Reporter	

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., March 10, 2009.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., March 10, 2009.**

**If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.**

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.